

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3, 421.14, and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” and Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

The proposed amendments are necessary to reflect the enactment of 2014 Iowa Acts, Senate File 2339, which made changes to the Redevelopment Tax Credits Program for brownfield and grayfield sites; to reorganize some existing rules to provide clarity; and to add requirements to the information that must be provided to the Department when a tax credit is transferred. The additional information required for transfers will allow the Department to provide the legislative Tax Expenditure Committee with additional data that will aid in the Committee’s evaluation of the program.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than March 9, 2015, to Alana Stamas, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Alternatively, requests may be e-mailed to [alana.stamas@iowa.gov](mailto:alana.stamas@iowa.gov). The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 24, 2015. Such written comments should be e-mailed to Alana Stamas at [alana.stamas@iowa.gov](mailto:alana.stamas@iowa.gov) or mailed to Alana Stamas, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact Alana Stamas, Policy and Communications Division, Department of Revenue, at (515)725-2265 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

After analysis and review of this rule making, the Department finds that the changes to the Redevelopment Tax Credit program are likely to have a positive impact on jobs by helping more developers finance the redevelopment of underutilized existing infrastructure and helping nonprofits finance redevelopment projects.

These amendments are intended to implement Iowa Code sections 15.119, 15.293A as amended by 2014 Iowa Acts, Senate File 2339, 422.11V, and 422.33.

The following amendments are proposed.

ITEM 1. Amend rule 701—42.41(15,422) as follows:

**701—42.41(15,422) Redevelopment tax credit.** The economic development authority is authorized by the general assembly and the governor to oversee the implementation and administration of the

redevelopment tax credit program. Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council and the economic development authority may claim a redevelopment tax credit once the taxpayer has been issued a tax credit certificate for the project by the economic development authority. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for a redevelopment project for the brownfield redevelopment authority which qualifies for the tax credit the economic development authority's administration of this program, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**42.41(1) Eligibility for the credit.** The economic development authority is responsible for developing a system for registration and authorization of projects receiving redevelopment tax credits. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed was \$1 million, and the amount of credits authorized for any one redevelopment project could not exceed \$100,000. For the fiscal year beginning July 1, 2011, the maximum amount of tax credits allowed cannot exceed \$5 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$500,000. For the fiscal year beginning July 1, 2012, and subsequent fiscal years, the maximum amount of tax credits allowed cannot exceed \$10 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$1 million. For more information, see Iowa Administrative Code 261—Chapter 65.

**42.41(2) Computation and claiming Amount of the credit.**

a. Maximum credit total. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed is \$1 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$100,000. For the fiscal year beginning July 1, 2011, the maximum amount of tax credit allowed cannot exceed \$5 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$500,000. For the fiscal year beginning July 1, 2012, the maximum amount of tax credits allowed cannot exceed \$10 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$1 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the economic development authority board but not in excess of the amount established pursuant to Iowa Code section 15.119.

b. Maximum credit per project. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 42.41(2) "a."

c. Percentage computation. The amount of the tax credit shall equal one of the following:

(1) to (4) No change.

**42.41(3) Claiming the credit.**

b. a. Certificate issuance. Upon completion of the project, the Iowa department of economic development authority will issue a tax credit certificate to the taxpayer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.41(3) 42.41(4). To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate.

e. b. Pro rata share. If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

d.—The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled \$100,000 whereby a \$12,000 redevelopment

tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).

*e. c. Carryforward.* To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any Except as provided in paragraph 42.41(3) “d,” any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

*d. Refundability.* A tax credit in excess of the taxpayer’s liability for the tax year is refundable if all of the conditions of economic development authority 261—paragraph 65.11(4) “b” are met.

~~42.41(3)~~ **42.41(4)** *Transfer of the credit.* The redevelopment tax credit can be transferred to any person or entity. However, a certificate indicating that the credit is refundable is only transferrable to the extent permitted by economic development authority 261—paragraph 65.11(4) “b.”

*a. Submission of transferred tax credit certificate to the department—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee’s name, address and tax identification number and the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit, and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries.

*b. Issuance of replacement certificate by the department.* Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. ~~If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries.~~

*c. Claiming the transferred tax credit.* The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

**42.41(5)** *Basis reduction of the redevelopment property.* The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a

grayfield site totaled \$100,000 for which a \$12,000 redevelopment tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).

This rule is intended to implement Iowa Code sections 15.293A as amended by 2014 Iowa Acts, Senate File 2339, and 422.11V and section 15.119 as amended by 2013 Iowa Acts, House File 620.

ITEM 2. Amend rule 701—52.39(15,422) as follows:

**701—52.39(15,422) Redevelopment tax credit.** The economic development authority is authorized by the general assembly and the governor to oversee the implementation and administration of the redevelopment tax credit program. Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council and the economic development authority may claim a redevelopment tax credit once the taxpayer has been issued a tax credit certificate for the project by the economic development authority. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for a redevelopment project for the brownfield redevelopment authority which qualifies for the tax credit the economic development authority's administration of this program, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

**52.39(1) Eligibility for the credit.** The economic development authority is responsible for developing a system for registration and authorization of projects receiving redevelopment tax credits. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed was \$1 million, and the amount of credits authorized for any one redevelopment project could not exceed \$100,000. For fiscal years beginning July 1, 2011, the maximum amount of tax credits allowed cannot exceed \$5 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$500,000. For the fiscal year beginning July 1, 2012, and subsequent fiscal years, the maximum amount of tax credits allowed cannot exceed \$10 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$1 million. For more information, see Iowa Administrative Code 261—Chapter 65.

**52.39(2) Computation and claiming Amount of the credit.**

a. Maximum credit total. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed is \$1 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$100,000. For the fiscal year beginning July 1, 2011, the maximum amount of tax credits allowed cannot exceed \$5 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$500,000. For the fiscal year beginning July 1, 2012, the maximum amount of tax credits allowed cannot exceed \$10 million, and the amount of credit authorized for any one redevelopment project cannot exceed \$1 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the economic development authority board but not in excess of the amount established pursuant to Iowa Code section 15.119.

b. Maximum credit per project. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 52.39(2) "a."

c. Percentage computation. The amount of the tax credit shall equal one of the following:  
(1) to (4) No change.

**52.39(3) Claiming the credit.**

b. a. Certificate issuance. Upon completion of the project, the Iowa department of economic development authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule ~~52.39(3)~~ 52.39(4). To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate.

*e. b. Pro rata share.* If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

*d.* ~~The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled \$100,000 for which a \$12,000 redevelopment tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).~~

*e. c. Carryforward.* ~~To claim the tax credit, the taxpayer must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. Any~~ Except as provided in paragraph 52.39(3) "d," any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

*d. Refundability.* A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the conditions of economic development authority 261—paragraph 65.11(4) "b" are met.

~~52.39(3) 52.39(4) Transfer of the credit.~~ The redevelopment tax credit can be transferred to any person or entity. However, a certificate indicating that the credit is refundable is only transferrable to the extent permitted by economic development authority 261—paragraph 65.11(4) "b."

*a. Submission of transferred tax credit certificate to the department—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit, and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries.

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*c. Claiming the transferred tax credit.* The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual

income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

52.39(5) Basis reduction of the redevelopment property. The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled \$100,000 for which a \$12,000 redevelopment tax credit was issued, the increase in the basis of the property would total \$88,000 for Iowa tax purposes (\$100,000 less \$12,000).

This rule is intended to implement Iowa Code sections 15.293A as amended by 2014 Iowa Acts, Senate File 2339, and 422.33 and section 15.119 as amended by 2013 Iowa Acts, House File 620.